89-561

In The

Supreme Court of the United States

October Term, 1989

LOUIS A. LaRAIA,

Petitioner,

vs.

ROBERT PHILLIS, a police officer of Hanover Township, in his official capacity; JAMES McCLURG, JOHN DOE and JAMES ROE, presently unidentified; LEWIS KIRCHNER, in his official capacity as a Beaver County District Magistrate; Chief Beaver County Deputy Sheriff RALPH RAMANNA, in his official capacity; JOE COGEN, in his official capacity as a Deputy Sheriff of Beaver County, PA; FRANK POLICARO, JR., in his official capacity as Sheriff of Beaver County, PA, JAMES ALBERT, in his official capacity as President of Hopewell Township, PA; AL CIANFRANO, in his official capacity as President of Monaco Borough; GEORGE YACCICH, in his official capacity as a Deputy Sheriff of Beaver County, PA, DOMINIC TENY, in his official capacity as Warden of the Beaver County, PA Prison; ANTHONY J. BEROSH, individually and in his official capacity as an Assistant District Attorney of Beaver County, PA; JOSEPH CABRAJA, individually and as Administrator of the Court of Common Pleas of Beaver County, PA; ROGER L. JAVENS, in his official capacity as a Commissioner of Beaver County, PA; GERALD LaVALLE, in his official capacity as a Commissioner of Beaver County, PA; JOSEPH H. WIDMER, in his official capacity as Chairman of Commissioners of Beaver County, PA; GENE E. ROBERTS, in his official capacity as Chairman of Hanover Township Supervisors; WAYNE HYATT, in his official capacity as a Supervisor of Hanover Township and; PHILLIP N. READ, in his official capacity as a Supervisor of Hanover Township

Respondents.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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89 pp

STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

I. IF A STATE CRIMINAL DEFENDANT MAKES A PRIMA FACIE PRESENTATION THAT THE UNASSIGNED PRESIDENT JUDGE OF THE PROSECUTING COUNTY HAS SECRETLY MADE CONTACT ABOUT HIS CASE WITH THE HIGHEST STATE DECISION MAKER, DO THE FIRST, FIFTH, SIXTH AND FOURTEENTH AMENDMENTS PLUS THE SUPERVISORY AUTHORITY OF FEDERAL COURTS REQUIRE AN INQUIRY, AT THE DEFENDANT'S REQUEST, AS TO WHAT HE HAS DONE AND WHERE ELSE HE HAS ACTED AND, IF SO, SHOULD AN OUT OF CIRCUIT JUDICIAL OFFICER PRESIDE OVER THE PROCEEDING?

II. IF A DISTRICT COURT AND ITS COURT OF APPEALS DECIDE A 42 USC 1983 CASE ON THE MISTAKEN BELIEF THAT THE DEFENDANTS WERE SUED AS INDIVIDUALS WHEN THE CAPTION, THE PLEADINGS, THE AFFIDAVITS OF PLAINTIFF AND HIS BRIEFS CLEARLY MOVE AGAINST THEM IN THEIR OFFICIAL CAPACITIES ALONE, AND THESE COURTS REFUSE TO ADJUDICATE THE CASE ON THE CORRECT DEFENDANT STATUS, SHOULD THE DECISIONS BE REVERSED?

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REFERENCE TO THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS DELIVERED IN THE COURTS BELOW

The December 20, 1988 and December 21, 1988 District Court opinions are unreported but are filed at C.A. #86-708 in the United States District Court for the Western District of Pennsylvania.

The June 15, 1989 Memorandum Opinion of the United States Court of Appeals for the Third Circuit was not published but the case disposition is noted in Tables 879 F.2d 857.

The June 15, 1989 Circuit Court Opinion has been printed in the Appendix to this Petition.

JURISDICTION

The judgment sought to be reviewed is the June 15, 1989 Panel Order of the United States Court of Appeals for the Third Circuit and the July 11, 1989 refusal of panel reargument and en banc rehearing. 28 USC 1254 (1) gives jurisdiction.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

First Amendment – "Congress shall take no law – abridging – the right of the people – to petition the government for a redress of grievances".

Fifth Amendment to the United States Constitution: "No person shall be deprived of life, liberty or property, without due process of law".

Sixth Amendment to the Constitution: "In all criminal prosecutions, the accused shall have compulsory process for obtaining witnesses in his favor –".

Fourteenth Amendment, Section 1 – "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

~~28~~ 42 USC 1983: "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state – subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress".

CONCISE STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED

Louis A. LaRaia (hereinafter called Petitioner) lived on his owned and posted against trespass 14-acre plus land in a rural area of Beaver County, Pennsylvania.

At about 10:30 PM, he heard a dog attempting to get at his prize steer which was in a wire surrounded pen on his property and some distance from his home.

When vocal shouts did no good, he fired what he wanted to be a warning shot at the dog. Unfortunately, the dog was wounded and petitioner fired a second shot to put it out of its misery plus stop its travel toward him because of his fear he would be attacked.

The alleged dog owner, together with three other members of a hunting party, appeared shortly thereafter with a Hanover Township policeman who, without process, obtained confessions from petitioner and searched his land and shortly thereafter charged Petitioner with Cruelty to Animals in alleged violation of 18 Purden Statute 5301, a misdemeanor, when the case could also have been prosecuted as a Summary Conviction.

When petitioner refused to pay off on a $10,000 shakedown for the dog purchased about two months previously for $200 under vague circumstances and without transfer papers, the case proceeded to trial in Beaver County, Pennsylvania.

When the alleged owner admitted the shakedown and said he would have and still would withdraw the prosecution if he received the $10,000, the Trial Judge said this was a usual event in criminal law in Beaver County and he would do nothing about it.

The District Attorney helped the alleged owner to attempt collection of the $10,000 as restitution after Petitioner was convicted and actually hired an alleged dog

value expert but failed in this effort due to defective proof.

Petitioner was subsequently sentenced to a $5,000 fine as punishment for his efforts to defend himself plus ordered to pay the costs of prosecution, $200 to the alleged owner and serve two years probation.

The Superior Court of Pennsylvania affirmed in an unpublished opinion and the case is presently pending on a petition for review in the Supreme Court of Pennsylvania.

In an attempt to stop the state action, Petitioner filed suit for 42 USC 1983 injunctive relief in the United States District Court for the Western District of Pennsylvania at C.A. § 86-708.

This relief was denied.

Petitioner also requested money damages from the dog's alleged owner and various Township and County officials, all of whom were sued in their official capacities – not as individuals.

The case was first assigned by lot to United States District Judge Donald E. Ziegler who refused to dismiss it.

When William L. Standish was appointed to the District Court, Judge Ziegler, sua sponte, sent the case to him.

While the case pended before Judge Standish, he, sua sponte, sent the case to newly appointed Judge D. Brooks Smith who then dismissed it and denied all relief.

After Petitioner's request for reconsideration was denied, he appealed to the United States Court for the Third Circuit which affirmed in an unpublished Panel decision and subsequently denied reargument before the Panel or rehearing en banc.

Petitioner raised many issues in the lower federal courts but is confining his petition here to the ex parte intervention of the President Judge of Beaver County with the Pennsylvania Supreme Court, the refusal of the federal courts to do anything about it or even allow limited discovery and dismissal of his case plus Circuit affirmance on the grounds Petitioner had sued Respondents as individuals when he clearly had sued them only in their official capacities which means their municipal employers were the targets.

THE COURT IGNORED PROBLEM INVOLVING EX PARTE PARTICIPATION OF BEAVER COUNTY PRESIDENT JUDGE ROBERT C. REED IN THIS CASE

Petitioner was improperly arrested on May 1, 1986. He immediately filed a "Petition for Writ of Habeas Corpus, Prohibition, Mandamus, Change of Venue and Appropriate Relief" in the Supreme Court of Pennsylvania at #25 Misc. W.D. 1986 in order to obtain both release from his incarceration and relief from what he alleged to be state and federal constitutional violations.

After oral argument was made by both sides, Supreme Court Justice Nicholas P. Papadakos released Petitioner on May 2, 1986 "on his own recognizance and until further order of this court". (App. 7)

Beaver County agents, including its Sheriff and Solicitor, immediately moved to circumvent this Order (but were never able to have it specifically revoked) and the entire Beaver County and Hanover Township power establishment organized to guarantee petitioner's defense would fail and to give him special processing not directed against other criminal defendants.

On May 15, 1986, prosecuting Hanover Township temporary, part-time policeman Robert Phillis arrested Petitioner even though the May 2, 1986 Order of Justice Papadakos was in full force and turned him over to two Beaver County Deputy Sheriffs who took him to regular duty Magistrate Milton Richael for arraignment.

The Magistrate released Petitioner and ordered the two Deputies to return him to the City of Beaver so he could arrange to go home.

After Petitioner was thus released, the Deputies, on direct order of Chief Deputy Sheriff Ralph Ramanna, rearrested Petitioner without process and deposited him in the Beaver County Jail where he remained for 14 days until released on $500 cash bond ($5,000/10%).

Petitioner's previous efforts to obtain release failed until his formal petition was granted and thus overruled previous denial of bond.

In an April 12, 1987 deposition taken in the federal case, Chief Ramanna contended President Judge Robert C. Reed, in a secret, ex parte meeting, had ordered him to arrest Petitioner and hold him until the court decided what to do and that is why he directed the May 15, 1986 rearrest.

After Petitioner had been convicted, the five Judges of Beaver County sat en banc on June 8, 1987 to hear post-verdict Motions and President Judge Reed, who was not the Trial Judge, took command.

During the fifteen minutes which the President Judge allowed for his presentation although there was only one other case on the Argument List), Petitioner's Counsel objected to the ex parte meeting.

President Judge Reed did not expect this matter to be mentioned as it had so far been secret. In responding, he said he saw nothing wrong with it and also, spontaneously, said he had sent a letter to the Pennsylvania Supreme Court about the case pending there which, at the time, was still undecided.

Although he promised to send Petitioner's Counsel a photo of this letter, he never did and also, through counsel furnished free by the Supreme Court of Pennsylvania Administrative Office, successfully resisted all of Petitioner's attempts in this federal court case to obtain it by discovery and other procedures.

He also successfully resisted Petitioner's August 14, 1987 attempt to obtain a copy of the letter from the Supreme Court of Pennsylvania and his request for an investigation about any other ex parte activity.

No written process or order of arrest has yet appeared to justify Petitioner's May 15, 1986 rearrest and 14 day incarceration and Jail Warden Teny denies he ever received such a document.

The Supreme Court of Pennsylvania, without opinion or a statement of reasons, later dismissed Petitioner's #25

Misc. W.D. 1986 petition plus its numerous subsequent amendments.

Starting with the May 2, 1986 Pennsylvania Supreme Court Order releasing Petitioner, what had previously been against him events like promising him a continuance and then issuing a Magistrate Bench Warrant through a Magistrate who was not assigned to duty that day and had no jurisdiction to act, appeared to be turning around to his benefit.

But then, when the former oppressive scene returned, petitioner had no way of knowing or suspecting why until he found out about the President Judge Reed/Chief Deputy Sheriff secret, ex parte conference and the President Judge Reed secret, ex parte Pennsylvania Supreme Court contact, the complete extent of which he has been unable to discover because of a close of ranks by those who know and refusal of those who have power to open the blockade to do so.

Although some cases advise diplomatic protest is protected, both Petitioner and his Counsel were well aware of the dangers of testing in this area.

After the Pennsylvania Supreme Court refused to even make President Judge Reed's letter available for examination, Petitioner attempted to obtain a remedy in the District Court.

1. On June 30, 1987, Petitioner's Counsel personally asked President Judge Reed's Secretary for a copy of the promised letter. She said she would ask the Judge when he was off the Bench. The letter was never received

(282-a) so Petitioner requested an extension of the federal discovery period (283-a).

2. On July 20, 1987, Petitioner made a formal, hand delivered letter to the President Judge requesting the letter (284-a).

3. On July 21, 1987, the President Judge sent Petitioner's Counsel a letter advising he was going to ask Counsel furnished by the Supreme Court of Pennsylvania Administrator's Office what to do (285-a).

4. On September 5, 1987, Petitioner sent a letter (472-a) to the Supreme Court of Pennsylvania Administrator in which letter he objected to their representation of President Judge Reed and requested an investigation about what the President Judge had done. Response to the letter was delegated to the lawyer who had been assigned to represent President Judge Reed and he, on August 10, 1987, rejected its requests and declined to produce the letter (473-a).

5. On August 29, 1988, Petitioner filed a motion (670-a, 871-a) to take the telephone depositions of President Judge Reed. It was denied after the President Judge objected but admitted the still undisclosed letter (678-a, 674-a) had been sent.

6. On October 3, 1988, Petitioner requested Supreme Court administrative Counsel not represent President Judge Reed when what he had done in the Supreme Court was in issue. The Motion was denied. The said Motion observed if the President Judge made secret contact with the Pennsylvania Supreme Court by one letter, he might be inclined to make other efforts both there and elsewhere.

7. On October 27, 1988, President Judge Reed filed a document resisting discovery but admitting he had sent the letter which he still refused to disclose so Petitioner could read it.

8. On November 10, 1988, Petitioner filed a Motion which alerted the District Court that on November 7, 1988, the Pennsylvania Superior Court in *Com. v. Winstead, III*, ___, 547 A.2d 789, 793, N.2, pointed out that improper conduct with a Judge is a second class misdemeanor in Pennsylvania.

9. On December 19, 1988, Petitioner, in resisting Respondent's Motion for Summary Judgment, filed a F.R.C.P. 56(e) and 56(f) affidavit requesting discovery of all President Judge Reed behind the scenes activity including lawyers, Beaver County and Hanover Township officials, any participation in the state case, how Counsel for the dog's owner which Counsel the President Judge Reed had previously appointed as his representative in a Beaver County murder case had been selected, and election campaign contributions between the President Judge, the Beaver County District Attorney, who had the same Campaign Manager, the Beaver County Trial Judge who contributed money to the President Judge's election and the Beaver County Solicitor who represented the President Judge plus Beaver County Commissioners and the Bench Warrant Magistrate plus the Magistrate he replaced in Petitioner's venue change proceeding and the Beaver County Court Administrator whose Attorney Wife was an office associate of the Wife of the President Judge. The Motion was denied.

10. On October 3, 1988, Petitioner filed a Motion for Preliminary Injunction and Other Relief (460-a to 485-a) which, inter alia, voiced fears that the President Judge might continue his secret conduct by behind the scene activity in the Beaver County Court, the Superior Court appeal and the Supreme Court of Pennsylvania (461-a) and asking he disclose everything he had done and prohibited from all future activity in this area. The Motion was denied.

This same fear and request for relief had already been mentioned in a previous Motion (470-a), but was denied.

11. Respondents refused to admit or investigate any President Judge Reed activity (527-a to 535-a).

12. On November 14, 1988, Judge Standish to whom Judge Ziegler had transferred the case on December 3, 1987, transferred the case to newly appointed Judge D. Brooks Smith. Petitioner, on November 21, 1988, filed a Motion asking the three Judges to start on a clean slate, reexamine all previous decisions and begin 28 USC 292 (c) and (d), 294 (a) and (d) and 295 proceedings to have the Chief Justice appoint an out of Circuit judicial officer to take over the case (337-a to 352-a). The Motion (which also wanted exploration of all President Judge Reed's activity in the state and federal courts) was denied (353-a, 354-a) on December 13, 1988 as was a Motion for Reconsideration (355-a to 370-a).

13. The above issues were raised in the United States Court of Appeals for the Third Circuit but denied including the 28 USC 292, 294 and 295 relief because

"there was no basis in fact or under the relevant statutes for granting LaRaia's request –".

DISTRICT AND CIRCUIT COURT CONFUSION OVER IN WHAT CAPACITY RESPONDENTS WERE SUED

Petitioner wanted to collect 42 USC 1983 money damages for Defendants' First, Fifth and Fourteenth Amendment violation even though his original claim for injunctive relief against them had been denied.

He pursued each government Defendant in his official capacity only and the dog's alleged owner as a private person who cooperated with these acting under color of law case Parties.

A mere examination of the suit caption which describes each Defendant makes this status clear and unambiguous and examination of the complaints, affidavits and briefs Petitioner filed excludes all doubt. (See App. 1)

Nevertheless, both the District Court and the Court of Appeals evaluated and ruled upon this litigation as though Petitioner had moved against each Defendant in his non-government capacity.

Petitioner made a final effort to overcome this court oriented error by his Motions for rehearing and rehearing en banc. He there pointed out specific places where his papers clearly disclose each Defendant is sued only in his official capacity which is the same as though Beaver County and Hanover Township were actually named and the individuals not named.

But the work was wasted because the previous court error was allowed to remain uncorrected when rehearing was denied.

This Petition for Certiorari is respectfully presented to correct what was done in this case.

Petitioner has not discussed the numerous other errors but confined himself to what he suggests are matters which affect important aspects of the administration of justice in United States Courts which are whether a State Judge is immune from inquiry when he interferes in a case to which he has not been assigned and whether the alleged heavy case load of Federal Judges can serve as an undisclosed excuse for what might be evaluated as non-precise adjudication and abandonment of previously mandated higher standards of adjudication and review.

REASONS FOR ALLOWANCE OF THE WRIT AND SUMMARY OF ARGUMENT

American jurisprudence has announced to the world that its judicial adjudications are made only by what is presented in open court by known participants who are subject to cross-examination.

Behind the scenes or secret influences are taboo. Here, President Judge Reed was allowed to participate secretly and what he said and to whom unexplored and unexposed for the record.

Petitioner respectfully asks this nation's highest court to prevent what he suggests is a clear break with all

published law and even citizen education which begins in all schools at eighth grade Civics classes.

Petitioner also suggest that if neither the District Court and/or the Court of Appeals cared whether Defendants had been sued as individuals or as alter-egos of their municipal employers that they might have also evaluated the other issues with the same lack of judicial concern.

Petitioner respectfully requests the United States Supreme Court not to approve what might appear to be an inferior standard of federal adjudication and to prevent continuation of what could end up with a lack of judicial concern or respect for higher goals which the public is advised are always applied.

ARGUMENT

I. IF A STATE CRIMINAL DEFENDANT MAKES A PRIMA FACIE PRESENTATION THAT THE UNASSIGNED PRESIDENT JUDGE OF THE PROSECUTING COUNTY HAS SECRETLY MADE CONTACT ABOUT HIS CASE WITH THE HIGHEST STATE DECISION MAKER, DO THE FIRST, FIFTH, SIXTH AND FOURTEENTH AMENDMENTS PLUS THE SUPERVISORY AUTHORITY OF FEDERAL COURTS REQUIRE AN INQUIRY, AT THE DEFENDANT'S REQUEST, AS TO WHAT HE HAS DONE AND WHERE ELSE HE HAS ACTED AND, IF SO, SHOULD AN OUT OF CIRCUIT JUDICIAL OFFICER PRESIDE OVER THE PROCEEDING?

Defendants' "right to an impartial adjudication be it Judge of Jury" is guaranteed and taking it away can

never be harmless error; *U.S. v. Gomez*, June 12, 1989, ___ US___, 109 S. Ct. 2237, 2248.

President Judge Reed has admitted, through his Supreme Court of Pennsylvania supplied Counsel and on the District Court official record, that he at least sent one letter to its Justice Nicholas P. Papadakos who released Petitioner on May 2, 1986.

Since that time, the State's highest judicial court dismissed his previously pending petition protesting his Beaver County prosecution and has refused to further intervene.

Petitioner's attempts to even obtain a copy of the letter were rejected by President Judge Reed, the State Supreme Court, the District Court and the Circuit Court of Appeals.

Two levels of Federal Judges have refused to allow any type of discovery as to what other contacts the President Judge might have made, where he made them, including other state or federal courts, what he said or did at each point.

The District Court refused to have even a hearing to decide if future President Judge Reed similar activity should be enjoined and the Circuit Court of Appeals approved.

Petitioner respectfully suggests that if the admittedly sent letter was harmless, President Judge Reed would have disclosed it and that if he had not interfered in any other aspect of this case that he would have welcomed the opportunity to say so and lay this problem to rest rather than give Petitioner reason to complain.

However, the President Judge not only refused but resisted and Petitioner respectfully suggests that if the President Judge is allowed to prevail that a substantial and fundamental foundation of what is advertised to the world as accepted American jurisprudence has been demolition balled and the same goes for his secret consultations with Chief Deputy Sheriff Ralph Ramanna who was an active and interested police officer in this case from almost its beginning.

Secret input has always been condemned by Federal Courts; *Willner v. Committee on Character and Fitness*, 1963, 373 US 96, 101, 105-106, 83 S. Ct. 1175, 1179, 1181; *Greene v. McElroy*, 1959, 360 US 474, 479 and N.25, 79 S. Ct. 1400, 1405 and N.25; *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 1968, 393 US 145, 150, 89 S. Ct. 337, 340; *Home Box Office v. F.C.C.*, 1977, C.A.D.C., 567 F.2d 9, 51 (ex parte contact with Commissioners); *Westinghouse Electric Corp. v. U.S. Nuclear Regulatory Commission*, 1977, C.A.3, 555 F.2d 82, 95 (secret ex parte hearings condemned); *Mitchum v. Foster*, 1972, 407 US at 402, 92 S. Ct. at 2162 (42 USC 1983 covers judicial actions).

Ex parte judicial discussions, even if they have no effect, are universally condemned and may be subject to severe sanctions; *U.S. v. Kahaner*, 1963, C.A.2, 317 F.2d 549 (Judge who attempted to influence another Judge convicted of obstructing justice); *U.S. v. Manton*, ___, C.A.2, 107 F.2d 834, 836 (fact decision correct irrelevant); *Hastings, Judge, v. Judicial Conference of the U.S.*, 1987, C.A.D.C., 829 F.2d 91, 95, N.12 (ex parte contact with law clerks); *U.S. v. Holzer*, 1987, C.A.7, 816 F.2d 304 (Judge has affirmative duty to disclose); *Tower v. Glover*, 1984, 467 US

at 914, 104 S. Ct. 2820 (when a non-immune person conspires with an immune Judge liability attaches); *King v. Love*, 1985, C.A.6, 766 F.2d 962 (Judge causes rearrest after Defendant discharged); *Sevier v. Turner*, 1984, C.A.6, 742 F.2d 262, 275 (non-support Judge orders criminal proceedings as a pressure to enforce civil obligation); *Whittaker-Merrill Co. v. Profit Counsellors, Inc.*, 1984, C.A.8, 748 F.2d 354, 359 (no more ex parte briefs); *Judicial Inquiry and Review Board v. Snyder*, 1987, ___Pa___, 523 A.2d 294, 298 (ex parte Judge-Lawyer discussion); *Judicial Review Board v. Fink*, 1987, ___Pa___, 532 A.2d 358, 361 (ex parte judicial meeting with only one lawyer).

Since judicial office is no insulation from criticism, *In Re Snyder*, 1985, 472 US 634, 646, 105 S. Ct. 2874, 2882, *Landmark Communications, Inc. v. Virginia*, 1978, 435 US 829, 889, 98 S. Ct. 1535, 1541 cited with approval in *Larsen v. Phila. Newspapers*, 1988, ___Pa. Super.___, 543 A.2d 1181, 1184 and all persons including the President are subject to subpoena; *U.S. v. Nixon*, 1974, 94 S. Ct. 3090, 3104, 3108, 418 US 683, 702, 709; *U.S. v. Burr*, 1807, 25 Fed. Cases 187 approved, *U.S. v. Valenzuela-Bernal*, 1982, 458 US 858, 870 N.8, 102 S. Ct. 3440, 3448, N.8, Petitioner respectfully suggests his limited inquiry about what President Judge Reed did in his cases should have been allowed especially when its refusal might be a Sixth Amendment refusal of guaranteed compulsory process and a Fifth Amendment denial of due process, *Valenzuela-Bernal*, supra.

Since Petitioner never saw the letter, he could not make arguments about what it contained, *Valenzuela-Bernal*, supra, N.8 (see also N.2 at 102 S. at Page 3452, 458 US

at Page 878 where Justice O'Connor discusses application of supervisory power).

Petitioner respectfully suggests application of *Vasquez v. Hillery*, 1986, 474 US 254, 263, 106 S. Ct. 617, 623 and *Wheat v. U.S.*, 1988, ___US___, 108 S. Ct. 1692, 1697 (proceedings must appear fair to those who observe them).

In addition, Petitioner can find no United States Supreme Court case where what has happened here is adjudicated so the facts present a case of first impression which justifies the grant of certiorari; *Schlagenhauf v. Holder*, 1964, 379 US 104, 110, 86 S. Ct. 234, 238.

Petitioner recognized the problem of finding out what a sitting Judge has done plus its diplomatic and jeopardy risks to both himself and his Counsel in even presenting the issue.

They decided the best idea was to ask newly appointed and here Judge Smith to wipe the slate clean; *Arizona v. California*, 1983, 460 US 605, 618-619 and N.8, 103 S. Ct. 1382, 1391 and N.8; *State Automobile Insurance Assn. v. Young Men's Republican Club of Allegheny County*, 1987, W.D. Pa., 663 F. Supp. 1077; *Schultz v. Oman Corp.*, 1987, C.A.3, 737 F.2d 339, citing *Arizona*, supra, with approval, and begin procedures to bring in an out of Circuit Jurist who would not have to see President Judge Reed after this case was over.

So, he asked Judge Smith to begin 28 USC 292 (c), 294 (a) and (d), 295 and 296 procedures to have the Chief Justice bring in an out of Circuit Jurist to make the future decisions.

This legislation provides, in relevant part, for the following procedures:

28 USC 292 (c) directs: "The Chief Justice of the United States may designate and assign temporarily a District Judge of one Circuit for service in another Circuit, either in a District Court or Court of Appeals, upon presentation of a certificate of necessity by the Chief Judge or Circuit Justice of the Circuit wherein the need arises."

28 USC 294 (a) advises "Any retired Chief Justice of the United States or Associate Justice of the Supreme Court may be designated and assigned by the Chief Justice of the United States to perform such Judicial duties in any Circuit, including those of a Circuit Justice, as he is willing to undertake."

28 USC 294 (d) explains that a retired Judge can be assigned by the Chief Justice "outside his own Circuit" "upon presentation of a certificate of necessity by the Chief Judge or Circuit Justice wherein the need arises –"

28 USC 295 restricts assignment of an active Judge out of Circuit unless the Chief Justice or Judicial Counsel of the Assignor Circuit agrees.

28 USC 292 (d), Pocket Parts, directs "the Chief Justice of the United States may designate and assign temporarily a District Judge of one Circuit for service in another Circuit, either in a District Court or a Court of Appeals, upon presentation of a certificate of necessity by the Chief Judge or Justice of the Circuit where the need arises".

28 USC 296 then gives the assigned Jurist full power. Petitioner can find no relevant cases discussing the scope of this procedure although it was used in *Centifranti v. Nix*, January 20, 1989, C.A.3, 865 F.2d 1422, 1428, N.6.

Petitioner respectfully suggests that if an out of Circuit Judge or a retired Supreme Court Justice had been appointed on his Motion that an impartial viewer of the case would feel more at ease with present result and now asks the clean slate request be granted and such a Jurist appointed to write upon it.

II. IF A DISTRICT COURT AND ITS COURT OF APPEALS DECIDE A 42 USC 1983 CASE ON THE MISTAKEN BELIEF THAT THE DEFENDANTS WERE SUED AS INDIVIDUALS WHEN THE CAPTION, THE PLEADINGS, THE AFFIDAVITS OF PLAINTIFF AND HIS BRIEFS CLEARLY MOVE AGAINST THEM IN THEIR OFFICIAL CAPACITIES ALONE, AND THESE COURTS REFUSE TO ADJUDICATE THE CASE ON THE CORRECT DEFENDANT STATUS, SHOULD THE DECISIONS BE REVERSED?

The alleged dog's owner was the only Defendant sued as an individual. Petitioner alleged his cooperation with the other Defendants exposed him to 42 USC 1983 liability; *Tower v. Glover*, 1984, 467 US at 914, 104 S. Ct. at 2820.

All the other Defendants were elected or appointed officials of either Beaver County, Pennsylvania, or Hanover Township, Pennsylvania, as can be clearly observed by examination of Petitioner's complaints, affidavits, motions and briefs filed in both the District Court and the

Court of Appeals including his motion for rehearing and rehearing en banc.

But, both the District Court and the Court of Appeals processed the case as though the municipal Defendants had been sued as individuals.

This error insulated these Defendants who were protected by qualified immunity which is a defense not available to Beaver County or Hanover Township; *Brandon v. Holt*, 1985, 469 US 464, 472, 105 S. Ct. 873, 878-879; *Atchison v. Roffani*, 1983, C.A.3, 708 F.2d 96, 100; *Owen v. City of Independence*, 1980, 445 US 662, 633, 100 S. Ct. 1398, 1408; *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, 1979, 440 US 391, 404, N.26, 99 S. Ct. 1171, 1179, N.26; *Copeland v. Philadelphia Police Dept.*, 1988, C.A.3, 840 F.2d 1139, 1143.

Petitioner's conviction, still on discretionary appeal in the Pennsylvania Supreme Court at #168, W.D. Allocatur Docket, 1989, was no bar to his money damage claim for constitutional violations; *Pembauer v. City of Cincinnati*, 1986, ___US___, 106 S. Ct. 1292, 1295; *Anela v. City of Wildwood*, 1986, C.A.3, 790 F.2d 1063, 1067, 1069.

Petitioner's final attempt to correct this mistaken suit status error by his motion for rehearing and rehearing en banc which specifically pointed out each place where he had clearly sued each municipal Defendant in his official capacity only was unsuccessful.

Petitioner respectfully suggests that if the District Court and the Court of Appeals were mistaken as to what they were doing, their decision should be reversed; *Thermstron Products, Inc. v. Hermansdorfer, Judge*, 1976, 423

US 336, 342-353, 96 S. Ct. 584, 591-599; *Appeal of Liggett Group, Inc.*, 1986, C.A.3, 785 F.2d 1109, 1117.

If the constantly complained about unbearable work load caused the adjudicating courts to be too busy for more precise work, Petitioner respectfully suggests that he and the public who look to these distinguished adjudicators for well established scholarship should not bear the loss and that some other solution like more help, more time to process and higher pay for overtime should be explored as a remedy; *Schweiker v. Chilicky*, 1988, ___US ___, 108 S. Ct. 2460, 2464; *Argensinger v. Hamlin*, 1972, 407 US 25, 35-36, 92 S. Ct. 2006, 2012.

CONCLUSION

Petitioner respectfully suggests disposition of this case to date presents a clear break with previously accepted and announced American jurisprudence.

President Judge Reed should not be insulated from discovery; *Dennis v. Sparkes*, 1980, 449 US 24, 30-31, N.5, 101 S. Ct. 183, 187-188, N.5, and a decision should be made on what he has filed – not on what he has not filed.

Although rarely found, instances of judicial intervention have even been found in the United States Court of Appeals for the Third Circuit as clearly demonstrated by a reading of *American Safety Table Co. v. Singer Sewing Machine Co.*, 1948, C.A.8, 169 F.2d 514 which discusses the appropriate remedy at Page 541; see also damage case reported in *Singer Sewing Machine Co. v. American Safety Table Co.*, E.D. Pa., 1949, 88 F. Supp. 260 and October 24,

1988 Edition of National Lawyer which advises Judge Aulik was suspended for 60 days because he allowed a one-sided attorney contact even though he ruled against this lawyer's client in the end.

Petitioner respectfully requests this case presents a matter of highest public interest and should be accepted for certiorari and the Bench, Bar and public advised if this High Court approves what appears to be a break from established legal precepts.

Respectfully Submitted,

ALLEN N. BRUNWASSER, ESQUIRE
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Pittsburgh, PA 15222
412-391-0329

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 89-3042

LOUIS A. LaRAIA,

Appellant,

vs.

ROBERT PHILLIS, a police officer of Hanover Township, in his official capacity; JAMES McCLURG, JOHN DOE and JAMES ROE, presently unidentified; LEWIS KIRCHNER, in his official capacity as a Beaver County District Magistrate; Chief Beaver County Deputy Sheriff RALPH RAMANNA, in his official capacity; JOE COGEN, in his official capacity as a Deputy Sheriff of Beaver County, PA; FRANK POLICARO, JR., in his official capacity as Sheriff of Beaver County, PA, JAMES ALBERT, in his official capacity as President of Hopewell Township, PA; AL CIANFRANO, in his official capacity as President of Monaco Borough; GEORGE YACCICH, in his official capacity as a Deputy Sheriff of Beaver County, PA, DOMINIC TENY, in his official capacity as Warden of the Beaver County, PA Prison; ANTHONY J. BEROSH, individually and in his official capacity as an Assistant District Attorney of Beaver County, PA; JOSEPH CABRAJA, individually and as Administrator of the Court of Common Pleas of Beaver County, PA; ROGER L. JAVENS, in his official capacity as a Commissioner of Beaver County, PA; GERALD LaVALLE, in his official capacity as a Commissioner of Beaver County, PA; JOSEPH H. WIDMER, in his official capacity as Chairman of Commissioners of Beaver County, PA; GENE E. ROBERTS, in his official capacity as Chairman of Hanover Township Supervisors; WAYNE HYATT, in his official capacity as a Supervisor of Hanover Township and; PHILLIP N. READ, in his official capacity as a Supervisor of Hanover Township

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On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil No. 86-708)
District Judge: D. Brooks Smith

Submitted Under Third Circuit Rule 12(6)
June 12, 1989

Before: SLOVITER, COWEN, and WEIS, *Circuit Judges*

(Filed Jun 15 1989)

MEMORANDUM OPINION OF THE COURT

SLOVITER, *Circuit Judge.*

This is a civil rights suit arising out of a series of events connected with Pennsylvania's prosecution of Louis LaRaia for killing a dog belonging to James McClurg. According to LaRaia he shot the dog accidentally while trying to scare it away from his prize steer. LaRaia was arrested on charges of cruelty to animals and incarcerated overnight when he refused to sign the papers to be released on his own recognizance. His failure to appear at subsequent hearings in connection with the cruelty to animals charge led to his arrest and incarceration on two other occasions. LaRaia was ultimately convicted of cruelty to animals and his conviction affirmed by the Pennsylvania Superior Court. *See Commonwealth v. LaRaia,* 1988 Pa. Super. LEXIS 3905 (Dec. 22, 1988).

While his criminal case was pending LaRaia filed suit under 42 U.S.C. § 1983 against McClurg, his two unidentified companions, and virtually every public official in Hanover Township and Beaver County who had any connection with LaRaia's prosecution. LaRaia's complaint

and amended complaint included as defendants police officers participating in the arrest and prosecution, county commissioners and township supervisors who allegedly condoned the arrest and prosecution, the Warden of Beaver County Jail, various deputy sheriffs, a district magistrate, a court administrator, and an assistant district attorney. LaRaia originally requested an injunction against the state prosecution, which the district court denied. The Court's order denying equitable relief also dismissed all claims against Hanover and Hopewell townships, and dismissed all claims against Beaver County except those pertaining to the conditions in the Beaver County Jail. LaRaia subsequently amended his complaint, dropping the judicial officers, the townships and Beaver County as defendants and adding a number of municipal and county officials and law enforcement officers as parties.

Most of the defendants named in the amended complaint filed motions to dismiss. The district court gleaned from LaRaia's voluminous amended complaint allegations of false arrest, denial of substantive due process, denial of procedural due process, and a claim of Eighth Amendment deprivations based on unsanitary and dangerous conditions at the Beaver County Jail. The court dismissed a number of the claims against public officials on the basis of absolute immunity or because LaRaia's allegations charged them with failing to take actions which they were not empowered to perform. As to County and Township officials and police officers, who only enjoy qualified immunity, the district court ruled that under the liberal pleading standard of *Conley v. Gibson*, 355 U.S. 41 (1957), the complaint could not be

dismissed, but that the motions to dismiss would be converted into motions for summary judgment. The court noted that the complaint before it was technically defective under Fed. R. Civ. P. 8(a)(3) because it did not include a prayer for relief or state what damages had been incurred, and granted leave to amend. The court also cautioned LaRaia that mere allegations such as those contained in the complaint which was before the court at that time would not be sufficient to withstand summary judgment, and permitted the plaintiff to dismiss any claims which might be deemed frivolous without risking Rule 11 sanctions. Finally, the district court provided a two month period of discovery in which LaRaia's counsel was to investigate and evaluate the factual basis for his claims.

The discovery period was extended several times. Before deciding the motions for summary judgment, the district court noted that it would be justified in dismissing the case on the basis of the failure to comply with the previous order of the court requiring amendment of the complaint. The court, however, instead addressed the merits of the case, and discussed LaRaia's claims against each of the defendants. The court then proceeded to examine the allegations and evidence offered for and against each of the parties and concluded that LaRaia's claims were either legally insufficient or evidentially insufficient and granted McClurg's motion to dismiss, ordered summary judgment for all other remaining defendants, and dismissed the amended complaint.

In the Statement of Issues in his appellate brief, LaRaia raises four legal challenges to the district court's treatment of his case. The first is that Judge Smith, who

ruled on the summary judgment motions, improperly overruled a prior order by Judge Ziegler to whom the case had previously been assigned. LaRaia's argument fails to take into account that Judge Ziegler's order dated June 4, 1987 required LaRaia to file an Amended Complaint stating separate prayers for relief against each defendant by August 20, 1987, and that LaRaia never filed such an amended complaint by that date or thereafter. However, even if Judge Ziegler had not made filing an amended complaint mandatory, it is clear that Judge Smith explicitly based his grant of summary judgment on the merits and not on the fact that LaRaia had failed to comply with the court's previous order LaRaia's contention is thus without merit.

LaRaia's second contention is that any defects in the amended complaint which was before Judge Ziegler were cured by affidavits subsequently filed in response to the summary judgment motions. Since Judge Smith explicitly considered the "Amended Complaint filed September 12, 1986, the discovery material, and affidavits of record, together with the legal arguments of counsel" in deciding the summary judgment motions on the merits, it is clear once again that LaRaia was not penalized for failing to comply with the order to file an Amended Complaint.

LaRaia's third argument is that the district court erred by granting the summary judgment motions without opportunity for hearing or oral argument. A hearing is not mandatory prior to the issuance of summary judgment provided the parties have been given notice and an opportunity to file all affidavits and counter affidavits relevant to the motion. *See Season-All Indus., Inc. v. Turkive Sise Ve Cam Fabrikalari, A.S.*, 425 F.2d 34, 39 (3d Cir. 1970);

see also Brobst v. Columbus Services Int'l., 761 F.2d 148, 154 (3d Cir. 1985), *cert. denied*, 108 S.Ct. 777 (1988). Those requirements were satisfied in this case.

LaRaia also argues that the district court erred by failing to grant his request to initiate procedures to have the Chief Justice of the Supreme Court assign federal judge from outside the Third Circuit to the case pursuant to 28 U.S.C. §§ 292(c)-(d), 294(a), (d). There was no basis in fact or under the relevant statutes for granting LaRaia's arguments in this respect and reject them. If there was any confusion in the district court's opinion with respect to plaintiff's assertions, such confusion was attributable to the confused and voluminous nature of plaintiff's motions and other papers. We are satisfied that the district court's opinion sufficiently deals with the relevant assertions and that the district court committed no error of law in granting summary judgment.

For the above reasons, we will affirm the judgment of the district court.

TO THE CLERK:

Please file the foregoing opinion.

/s/ Illegible
Circuit Judge

In the Supreme Court of Pennsylvania

Western District

NO. 25 W.D. MISCELLANEOUS DOCKET 1986

COMMONWEALTH EX REL LOUIS LaRAIA, Petitioner	)	Petition for Writ of Habeas Corpus, Prohibition, Mandamus, Change of Venue and Appropriate Relief of the County of Beaver
V.	)	
LEWIS KIRCHNER, A DISTRICT MAGISTRATE OF BEAVER COUNTY, PENNSYLVANIA	)	*No.* C-108-85

Certified from the Record

5/2/86 Petition for Writ of Habeas Corpus, Prohibition, Mandamus, Change of Venue and Appropriate Relief, filed.

ORDER

"AND NOW, to-wit, this 2nd day of May, 1986, IT IS HEREBY ORDERED that Plaintiff, LOUIS LaRAIA, be released from custody forthwith on his own recognizance and until further Order of this Court.

/s/ Nicholas P. Papadakos
Justice, Supreme Court of
Pennsylvania"

In Testimony Whereof, *I have hereunto set my hand and the seal of said Court at Pittsburgh, Pa. this 2ND day of MAY 1986.*

/s/ Irma T. Gardner